

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

PENNSYLVANIA STATE CONFERENCE)
OF THE NAACP, *et al.*,)
Plaintiffs,) Civil Action No.: 1:22-cv-00339
v.)
AL SCHMIDT, *et al.*,)
Defendants.) Judge Susan P. Baxter

MOTION TO INTERVENE OF RICHARD MARINO

Richard Marino supports and seeks to uphold free and fair elections on behalf of all Pennsylvanians. He therefore respectfully moves to intervene in this case for the purpose of appealing the Court's order and judgment and upholding the General Assembly's duly enacted election laws.

Mr. Marino currently serves as the Vice Chairman of the Towamencin Township Board of Supervisors in Montgomery County, Pennsylvania. He was a candidate for reelection in the November 7, 2023 general election. Under the rules in effect on election day—and under which Towamencin Township voters cast their ballots and voted—Mr. Marino prevailed, receiving 4 more votes than his challenger, Kofi Osei.

This Court's order and judgment issued weeks after election day and weeks after voters had cast their ballots. It nonetheless changed the apparent outcome of the Towamencin Township election. Invoking the Court's order, the Montgomery County Board of Elections counted 6 ballots that failed to comply with the date requirement. Including those noncompliant ballots in the vote total resulted in a tie between Mr. Marino and Mr. Osei. The Montgomery County Board of Elections convened a casting of lots on November 30, 2023 (the day after this Court entered

judgment), *see* 25 Pa. Stat. § 3168, through which it declared Mr. Osei the winner. In other words, after Mr. Marino had won reelection, this Court's order and judgment flipped the apparent result and Mr. Osei was declared the winner.

Mr. Marino now seeks to intervene in this matter for the purpose of appealing the Court's judgment. Mr. Marino attaches as **Exhibit 1** his declaration and as **Exhibit 2** the Answer and Affirmative Defenses he would file, as necessary, if permitted to intervene.

Time is of the essence. Mr. Marino's current term of office ends on December 31, 2023. Absent a stay or change in the apparent outcome caused by the Court's judgment, Mr. Osei will be sworn into office on January 2, 2024. Mr. Marino therefore respectfully requests that the Court expedite the briefing and decision on this motion. In particular, Mr. Marino requests that the Court set a deadline of Tuesday, December 5, 2023, for any responses to this motion and a deadline of Thursday, December 7, 2023 for a reply in support of this motion, and resolve this motion no later than Friday, December 8, 2023. Mr. Marino intends to file a notice of appeal of the Court's judgment by Monday, December 11, 2023.

Counsel for Mr. Marino contacted counsel for the other parties regarding their position on this motion. The Elk County Board of Elections and the Lancaster County Board of Elections have no objection to this motion.

Plaintiffs, Secretary Schmidt, and the Erie County Board of Elections oppose this motion. The Montgomery County Board of Elections has no intention of consenting to this motion. The Allegheny County Elections Division will not consent to this motion.

The Chester County Board of Elections is unable to provide a response within the time requested. The Bucks County Board of Elections is unable to consent at this time. The Philadelphia County Board of Elections takes no position at this time but reserves the right to

oppose the motion after reviewing the papers. The parties noted below (including parties the Court has dismissed from the action) take no position on this motion.¹

WHEREFORE, Richard Marino respectfully requests that the Court GRANT this motion and permit him to intervene as a defendant in this proceeding.

¹ Armstrong County Board of Elections; Bedford County Board of Elections; Blair County Board of Elections; Bradford County Board of Elections; Cameron County Board of Elections; Carbon County Board of Elections; Centre County Board of Elections; Columbia County Board of Elections; Crawford County Board of Elections; Dauphin County Board of Elections; Delaware County Board of Elections; Fayette County Board of Elections; Franklin County Board of Elections; Fulton County Board of Elections; Greene County Board of Elections; Huntingdon County Board of Elections; Indiana County Board of Elections; Jefferson County Board of Elections; Lawrence County Board of Elections; Lebanon County Board of Elections; Lehigh County Board of Elections; Lycoming County Board of Elections; Monroe County Board of Elections; Montour County Board of Elections; Northampton County Board of Elections; Northumberland County Board of Elections; Perry County Board of Elections; Potter County Board of Elections; Snyder County Board of Elections; Somerset County Board of Elections; Sullivan County Board of Elections; Tioga County Board of Elections; Union County Board of Elections; Venango County Board of Elections; Warren County Board of Elections; Washington County Board of Elections; Wayne County Board of Elections; Wyoming County Board of Elections; York County Board of Elections.

Dated: December 1, 2023

Respectfully submitted,

/s/ Kathleen A. Gallagher
Kathleen A. Gallagher
PA I.D. #37950
THE GALLAGHER FIRM, LLC
436 Seventh Avenue, 31st Floor
Pittsburgh, PA 15219
Phone: (412) 308-5512
kag@gallagherlawllc.com

John M. Gore *
E. Stewart Crosland
Louis J. Capozzi III*
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Phone: (202) 879-3939
jmgore@jonesday.com
scrosland@jonesday.com
lcapozzi@jonesday.com

Thomas W. King, III
Thomas E. Breth
DILLON, McCANDLESS, KING,
COULTER & GRAHAM, LLP
128 W. Cunningham St.
Butler, PA 16001
Phone: (724) 283.2200
tking@dmkcg.com
tbreth@dmkcg.com

*Counsel for Prospective Intervenor Richard
Marino*

* Admitted pro hac vice